

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

KEVIN A. O'CONNELL,

Plaintiff,

-v-

1:06-CV-1113 (LEK/VEB)

MICHAEL J. ASTRUE, Commissioner  
of Social Security,

Defendant.

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**DECISION AND ORDER**

This matter comes before the Court following a Report-Recommendation filed on February 11, 2009, by the Honorable Victor E. Bianchini, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(d) of the Northern District of New York. Report-Rec. (Dkt. No. 16).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," FED. R. CIV. P. 72(b), in compliance with L.R. 72.1. No objections have been raised in the allotted time with respect to the Report-Recommendation filed by Judge Bianchini. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, it is hereby

**ORDERED**, that the Report-Recommendation (Dkt. No. 16) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

**ORDERED**, that Plaintiff's Motion for judgment on the pleadings (Dkt. No. 7) is  
**GRANTED in part**; and it is further

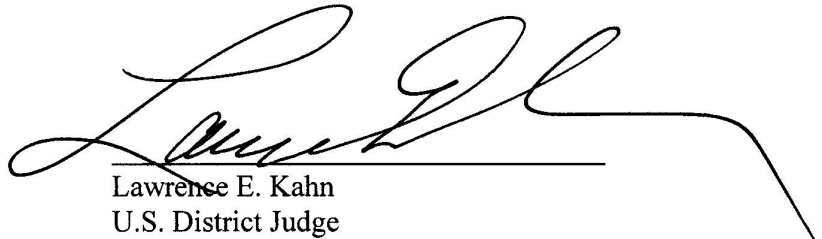
**ORDERED**, that Defendant's Cross-Motion for judgment on the pleadings is **DENIED**; and  
it is further

**ORDERED**, and the Complaint (Dkt. No. 1) is **REMANDED** to the Commissioner for  
further proceedings consistent with the Report-Recommendation; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: March 09, 2009  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge